IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 330 of 2001

in

SPECIAL CIVIL APPLICATIONNo 9764 of 2000

WITH

LETTERS PATENT APPEAL NO. 331 OF 2001

IN

SPECIAL CIVIL APPLICATION NO. 9446 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SAURASHTRA OIL MILLS ASSO.

Appearance:

LETTERS PATENT APPEAL NO. 330 OF 2001

AND LETTERS PATENT APPEAL NO. 331 of 2001

MR. SN SHELAT, Advocate General with
MR. AD OZA, Government Pleader with
MR. UA TRIVEDI, AGP for Appellant

MR. V. SRINIVASAN for MR HARDIK RAVAL for
Respondent No.1
MR AKSHAY MEHTA, Sr. Central Govt. Standing
Counsel for Union of India

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 19/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. These two appeals are directed against the common judgement and order dated 11th April 2001 passed by the learned Single Judge in Special Civil Applications Nos. 9446 of 2000 (Letters Patent Appeal No. 331 of 2001) and 9764 of 2000 (Letters Patent Appeal No. 330 of 2001), by which these two Special Civil Applications were allowed by setting aside the impugned Order dated 26th July 2000 at Annexure `A' to the petitions, prescribing stock limit of edible oilseeds and edible oils under clause 24(1) of the Gujarat Essential Articles (Licencing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as `the State Order of 1981'), and by ordering that the words `edible oilseeds and edible oils' wherever occurring in the State Order of 1981 stand deleted hereafter.

1.2 Both these appeals have been fully and finally heard at the request of learned counsel appearing for both the sides.

2. In Special Civil Application No. 9764 of 2000, the petitioner (Shri Saurashtra Oil Mills Association) had challenged the order made by the respondent No.1 State on 26-7-2000 at Annexure `A' to the petition, by which in pursuance of sub-clause (1) of clause 24 of the State Order of 1981, the Government of Gujarat amended the order dated 14th August 1998 by substituting the storage limits in respect of dealers and thereby providing that no dealer shall either by himself or by any person on his behalf store or have in his possession

at any time any edible oilseeds or edible oils in excess of the quantities specified thereunder, which were 1000 quintals for wholesaler of edible oilseeds including groundnut in shell, and, 100 quintals for retailer (all edible oilseeds taken together); and 300 quintals for the wholesaler and 20 quintals for the retailers (all edible oils including hydrogenated vegetable oils). The Order dated 14th August 1998 in which the amendment was made by the impugned Order of 26th July 2000 was made under clause 24(1) of the State Order of 1981 providing the stock limits for the aforesaid items which were 2000 quintals for edible oilseeds including groundnut in shell for the wholesaler and 100 quintals for the retailer. It provided the stock limits of 600 quintals in respect of edible oils for the wholesaler and 20 quintals for the retailer.

2.1 Invoking the provisions of Articles 14, 19(1)(g), 226, 251, 254 and 256 of the Constitution of India, the petitioner challenged the `inaction' on the part of the State Government in not deleting `edible oilseeds and edible oils' from the list of essential articles in the State Order of 1981 and sought for a declaration that the State Order of 1981 shall not apply to edible oilseeds and edible oils. According to the petitioner, the directions issued in the impugned Order dated 26-7-2000 were illegal and void. An amendment was effected on 10-11-1997 in the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 (hereinafter referred to as `the Central Order of 1977') by virtue of which, from the clauses including clause 3 for licencing of dealers, `edible oilseeds and edible oils' were deleted. The Central Order of 1977 was issued by the Central Government under section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as `the said Act'), and Clause 3 thereof related to licencing of dealers (and not licencing of dealers and producers as mentioned in paragraph 2 of the petition). According to the petitioner, a communication was sent on 13-11-1997 from the Central Government to the Secretaries of all States requiring them to comply with the Amendment Order dated 10-11-1997 deleting certain clauses of the Central Order of 1977 so far as they related to `edible oilseeds and edible oils'. The Amendment Order dated 10th November 1997 was issued by the Central Government under section 3 of the said Act for amending the Central Order of 1977 by deleting the words `edible oilseeds and edible oils' from the preamble and various clauses of the Central Order of 1977, the effect of which was that the Central Order no longer applied to `edible oilseeds and edible oils' after the omission of these words. The petitioner also

referred to a letter written by the Joint Secretary to the Government of India on 23-12-1997 as per annexure `B' to the petition, stating that the State Governments / Union Territories had been requested to ensure compliance with the amendment to the Central Order of 1977. [That letter at Annexure `B' dated 23rd December 1997 appears to have been written by the Joint Secretary to one Mr. Shyam Bihari Mishra, Ex-M.P. in response to his letter dated 10-12-1997 and does not appear to be any circular to the State Governments, as has been assumed in his judgement by the learned Single Judge.] The petitioner has further stated that, on 21st August 2000, the Central Organization for Oil Industry & Trade had written a letter to the petitioner that action of not deleting `edible oilseeds and edible oils' from the A.P. Schedule Commodities Dealers (Licencing & Distributing) Order, 1982 was challenged by the A.P. Oil Millers Association Ltd. before the Andhra Pradesh High Court in Writ Petitions Nos. 3816 and 7753 of 1998, which were allowed on 8-1-1998, and that the judgement of the learned Single Judge was confirmed by a Division Bench in Writ Petitions Nos. 1546 and 1549 of 1998, which were dismissed. Thereupon, the Government of Andhra Pradesh had issued a circular dated 7-8-2000 stating that there was no need for the dealers and traders to obtain any licence for doing business in `edible oilseeds and edible oils' under the Andhra Order of 1982. It is contended in paragraph 5 of the petition that whenever there is a conflict between the Central Act and the local Orders, Rules or Notifications issued thereunder, the conflicting rules, policies, orders or notifications would be illegal and void ab-initio to the extent of inconsistency with the Central Act. According to the petitioner, the effect of the amendment in the Central Order of 1977 was that, no licence was necessary for `edible oilseeds and edible oils' as earlier required by clause 3 of the Central Order which was now confined only to pulses. It is stated that whenever Central Control Order is amended, such amendment is deemed to be applicable to the Control Order of the State Government, and that the directions issued by the Central Government are binding upon all the State Governments. Any direction issued by the State Government in disregard of the directions of the Central Government would frustrate the very purpose of the amendment in the Central Order of 1977. Referring to the provisions of Articles 251, 254 and 256 in detail, in paragraph 13 of the petition, it has been contended that the executive power of the State is to be exercised so as to ensure compliance with the laws and directions of the Union of India and therefore, the impugned order at Annexure `A' is required to be quashed and set aside

being void ab-initio and in violation of these constitutional provisions. It is stated that the Central Government has now permitted import of all types of edible oils, such as, cotton seed oil, sunflower oil, palmoline, soyabean oil etc. by lifting all the restrictions on their import and as a result thereof, it appears that the Central Government has thought it fit to delete `edible oilseeds and edible oils' from the Central Order of 1977, with a view to ensure smooth business operation without the harassment to the dealers / traders / producers from the Government officers.

2.2 The respondents in their affidavits-in-reply filed in the petition have contested the petition by contending that there is no conflict between the Central Act and the local Orders, because, the State Government had passed the Orders in exercise of its powers under section 3 read with section 5 of the said Act read with the orders of the Government of India made on 3-11-1974 and 9-6-1978 under section 5. According to the State Government, it was empowered to pass the impugned Order under clause 24(1) of the State Order of 1981, and that these measures were required to be taken for controlling the regular supply and prices of the essential commodities. It is pointed out that the State Order of 1981 was issued after prior concurrence of the Central Government with a view to maintain supplies of essential commodities and securing their equitable distribution and availability at fair prices.

2.3 In the affidavit in reply filed on behalf of the original respondent No.2 - Union of India, it was stated that considering the fact that the State Governments would be the proper authorities to assess the situation prevailing in their respective States in respect of certain essential commodities, including `edible oilseeds and edible oils', the Central Government had notified several orders under section 5 of the said Act delegating powers conferred by section 3(1) of the said Act to the State Government. Such orders were notified in the years 1972, 1974 and 1978. By virtue of these orders, the respective State Governments were duly empowered to take appropriate measures to achieve the purposes mentioned in section 3 of the said Act, subject to the conditions specified therein. It is stated that, in the earlier orders of 1972 and 1974, there was a condition to the effect that no Order should be issued in pursuance of the powers delegated if it was inconsistent with any of the Orders issued by the Central Government under the Act. However, this condition was deleted in the Order of 1978, while retaining the condition of prior concurrence of the

Central Government before issuing an Order, as stated therein. It is pointed out that considering the local situation in respect of prices in respect of edible oils, especially groundnut oil in Gujarat, the then Minister for Food, Civil Supplies and Consumer Affairs of the State of Gujarat, by his letter dated June 19, 1998, brought to the notice of the Minister for Food and Consumer Affairs Department of Sugar and Edible Oil, Government of India, the unabated rise in prices of edible oil and in light thereof, he expressed his view that it was absolutely imperative that the State Government must have the power to enforce strict control over the unscrupulous oil traders and millers. It was brought to the notice of the Union Minister that ever since the amendment in the Central Stock Control Order of 1977, the oil traders and millers had absolutely a free hand, resulting in unprecedented price rise. The Government of India was therefore requested to reintroduce stock control at the earliest. In response to that letter, the Minister for Food and Consumer Affairs, Government of India sent a reply on 27th July 1998 drawing the attention of the State Minister to the Central Government's order dated 9-6-1978, whereby the powers under sub-section (1) of section 3 of the said Act were already delegated to the State Government under section 5. The State Government was advised that, if it found appropriate, it could regulate the storage, distribution etc. of `edible oilseeds and edible oils'. It was mentioned that the State Government would be the appropriate authority to take decision regarding permissible stock limits and the turnover period within the area of its jurisdiction. Thereafter, the State Government issued Order dated 14th August 1998 in pursuance of clause 24(1) of the State Order of 1981. It is stated that the Union of India has been aware of and vigilant about the situation prevailing in the State of Gujarat in respect of essential commodities and the Union Minister had addressed the letter to the Chief Minister on 16th July 1998 and the concerned Secretary of the Union Ministry had also written a letter to the Chief Secretary of the State on 24th July 1998, by which the State was advised to take appropriate measures by issuing orders pursuant to the delegation of powers under section 5 of the said Act. It was stated in paragraph 8 of the affidavit in reply that the State Government was duly empowered to issue orders in respect of `edible oilseeds and edible oils' irrespective of the fact that the Central Government had deleted the words `edible oilseeds and edible oils' from the Central Order of 1977.

3. In Special Civil Application No. 9446 of 2000

(filed by the petitioner - Rajmoti Industries), the impugned Order passed by the State Government on 26-7-2000 at Annexure `A' to that petition has been challenged on the same grounds as are narrated above, and a declaration is also sought that the words `edible oilseeds and edible oils' wherever occurring in the State Order of 1981 stand deleted forthwith. Even the respondents have taken up identical contentions in the affidavits in reply filed by them in that petition and these have already been referred to hereinabove.

4. The learned Single Judge held that there was no substance in the contention raised on behalf of the State Government that the impugned orders could be made by the State Government under the State Order of 1981, because, the State Government is not empowered to pass any orders inconsistent with the orders passed by the Central Government, and that the powers delegated to the State Government were subject to further directions of the Central Government. It was held that, by the government letters dated 13th November 1997 and 23rd December 1997, all the State Governments were required to make amendment in the existing State Government Orders to delete the words `edible oilseeds and edible oils' by making law to give effect to the directions of the Central Government, and that the State Government was not entitled to act as a delegate when the delegated powers in respect of `edible oilseeds and edible oils' had already been taken away by the Central Government vide its Amendment Order of 1997. It was also held that the impugned Order of the State Government was contrary to the order of the Central Government. Relying upon the decision of the Supreme Court in the case of District Collector, Chittoor v. Chittoor District Groundnut Traders' Association, reported in 1989 (2) SCC 58, the learned Single Judge held that the impugned Order passed by the State Government was made without any prior concurrence of the Central Government, and was therefore illegal and not sustainable in the eye of law. The learned Single Judge reproduced the contents of the correspondence between the State Minister and the Union Minister and the Government officials and came to the conclusion in paragraph 23 of the judgement that the extracts of the letters which were examined showed that the letters dated 27-7-1998 and 24-4-1998 of the Union Minister and the Secretary of the Central Government contained their personal opinion that the State Government had power under the delegation made under section 5 of the said Act to issue the orders in respect of `edible oilseeds and edible oils'. It was held that it was wrongly assumed that the delegated powers had not been taken back by the Central Government

and that the State Order of 1981 was therefore still in operation in respect of `edible oilseeds and edible oils'. According to the learned Single Judge, the provisions of the State Order of 1981 could not operate, because, the powers delegated earlier stood withdrawn in view of the amendment by the Central Government in its own Central Order of 1977. The contents of the so called circular dated 23-12-1997, which, as pointed by us hereinabove, was only a letter written by the Joint Secretary of the Central Government to one Ex-M.P. Mr. Mishra are reproduced and relied upon by the learned Single Judge as if it was a Circular issued to all the State Governments. The other circular - letter dated 13-11-1997 which is reproduced in the judgement, is a letter which was written by the Chief Director, Ministry of Food and Consumer Affairs to the Secretary, Food and Civil Supplies Department of all States as well as Union Territories. It was under this letter that the Amendment Order dated 10-11-1997 was forwarded to all State Governments and Union Territories for information and compliance. This letter has been construed by the learned Single Judge as issuance of a mandate to the State Governments to amend their State Orders, by making similar deletion in respect of `edible oilseeds and edible oils' from them. The word compliance used in this letter is held by the learned Single Judge to mean making necessary corrections, modifications or amendments relating to storage and control of `edible oilseeds and edible oils' in the State Order of 1981 as were made by some State Governments by deleting `edible oilseeds and edible oils' from their respective Orders. The learned Single Judge concluded that once the `edible oilseeds and edible oils' were deleted from the Central Storage Order of 1977 by virtue of the Amendment Order of 1997 by the Central Government, the State Order of 1981 stood repealed in respect of licencing and stock declaration of edible oilseeds and edible oils. It was held that the impugned Order dated 26-7-2000 issued under clause 24(1) of the State Order of 1981 was without authority. The learned Single Judge therefore set aside that Order and declared that the words `edible oilseeds and edible oils', wherever occurring in the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981, stand deleted hereafter.

5. The learned Advocate General appearing for the appellant - State of Gujarat in these two appeals contended that, in view of the powers delegated to the State Government under section 5 of the said Act, the State Government was empowered to issue the State Order of 1981, which was independent of the Central Order of

1977, and therefore, the validity of the provisions of the State Order of 1981 did not depend upon the provisions of the Central Order of 1977. It was contended that the directions that may be issued under clause 24 of the State Order of 1981 did not require any concurrence under the conditions imposed in the Notification dated 9-6-1978 delegating powers to the State Government under section 5 of the said Act. It was pointed out that, in the preamble of the State Order of 1981, it was recorded that the order was made with prior concurrence of the Central Government. It was therefore argued that even clause 24 of the State Order of 1981 was issued after obtaining prior concurrence, meaning thereby that the Central Government had agreed to the State Government issuing the directions which were contemplated by section 24. It was submitted that there were no directions of the Central Government to the effect that the State Government should not impose any stock limit under clause 24 of the State Order and in fact, the Central Government had concurred with the State Government in issuance of the directions under the order dated 14th August 1998 made under clause 24 of the State Order of 1981. Even before the Court, the Central Government had filed an affidavit showing that it was agreeable to the issuance of such order by the State Government, and that the order dated 14th August 1998 was justified. It was therefore futile to issue a writ directing deletion of the entries notwithstanding the concurrence of the Central Government also expressed before this Court, even though no concurrence was required under the order delegating the powers in matters which were within the scope of clause (d) of section 3(2) of the said Act. The learned Advocate General then referred to the correspondence between the Union and the State Government and submitted that there was no question of any personal opinion being expressed in such official correspondence and the State Government had impressed upon the Central Government about the need to control the stocks of `edible oilseeds and edible oils' in the State having regard to the escalation of prices and to prevent hoarding. It was pointed out that the Central Government had readily agreed that the State Government may go ahead with the stock restrictions in respect of these commodities and it is only thereafter that the order dated 14th August 1998 was issued by the State Government under clause 24(1) of the State Order of 1981. It was submitted that even the Central Government never considered that by amending the Central Control Order of 1977, the powers of the State Government were being taken away. The State Government was in fact asked to go ahead with such restrictions under the provisions of the State

Order of 1981, which was made by the State Government under section 3(1) of the said Act read with section 5 thereof. It was also submitted that this was not a case where the State Government did not have its own powers in respect of such commodities pointing out that the subject matter fell within entry 33 of the Concurrent List. It was submitted that even the State Government on its own could have made a law on the subject and controlled these essential commodities and that the executive power of the State Government was coextensive with its legislative powers under Article 162 of the Constitution. Therefore, even the State Government on its own could have exercised these powers within the limits of the constitutional provisions which had a bearing on the aspect of repugnancy. He submitted that the Central Legislature enabled the State Government to exercise the statutory powers under section 3(1) in respect of a matter which was falling in the Concurrent List and this should be therefore viewed from the angle that the central legislature thought it proper to take States into confidence by empowering their governments to make orders under section 3(1) whenever the powers were delegated so that the State Government may harmoniously act.

5.1 The learned Advocate General relied upon the following decisions in support of his contentions :-

[a] He referred to the judgement in Roop Chand v. State of Punjab, reported in AIR 1963 SC 1503, in which it was held by the Supreme Court that a power when delegated under the Act remains the power of the Government. The Government can only delegate the powers given to it by the statute and cannot create an independent power in the officer. It was held that when the delegate exercises the powers, he does so for the government. Therefore, an order made by an officer, on delegation to him of the powers of the government for the purposes of the Act, would be an order of the government.

[b] The decision of the Supreme Court in K. Ramanathan v. State of Tamil Nadu, reported in AIR 1985 SC 660 was cited for the proposition that the general power to issue the orders flows from the provisions of sub-section (1) of section 3 of the said Act which stands delegated to the State Government by virtue of the notification issued under section 5 of the said Act.

[c] The decision of the Supreme Court in State of

Andhra Pradesh v. Potta Sanyasi Rao, reported in AIR 1975 SC 2030 was cited for the proposition that delegation under section 5 of the said Act was a general delegation and that it would enure for all exercise of powers by the State Government with respect to commodities declared essential by the Central Government even subsequent to the order of delegation.

[d] The decision in Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh, reported in AIR 1981 SC 2030 was pointed out to show that it was held by the Supreme Court that concurrence of Central Government was necessary under the delegation Order GSR 800 dated June 9, 1978 made under section 5 of the said Act only when the orders related to matters specified in clauses (a), (c) and (f) of section 3(2) of the said Act or in respect to distribution or disposal of foodstuffs to places outside the State or in respect to regulation of transport of any foodstuff under clause (d). It was submitted that, for the Control Order which did not relate to any of these matters, no concurrence of the Central Government was necessary, as held by the Supreme Court. Even if the concurrence is needlessly obtained on earlier occasion, the State Government was not obliged to obtain it whenever again there was an amendment in the Control Order.

6. The learned counsel appearing for the contesting respondent No.1 in these two appeals strongly supported the judgement and order of the learned Single Judge. He argued that the State Order of 1981 was not an independent order, but it was made in implementation of the Central Order of 1977. Therefore, when by the Amendment Order of 1997 made by the Central Government, the words `edible oilseeds and edible oils' were deleted from the Central Order of 1977, the State Order of 1981 ceased to operate as regards these essential commodities. It was contended that prior to the State Order of 1981, there was State Order of 1977 dealing with `edible oilseeds and edible oils' made by the State Government in aid of the Central Order of 1977. He submitted that clause 3 of the Central Order of 1977 required the dealer to get a licence under the State Control Order and the State Control Order was expected only to provide for the modalities regarding issuance and terms and conditions of such licence. It was submitted that the basic requirement of licence was in clause 3 of the Central

Order of 1977 and all other things fell within the purview of the State Control Order, and therefore, when the basic requirement of obtaining a licence in respect of `edible oilseeds and edible oils' was taken away from the Central Order of 1977, the State Government cannot insist upon licences under its Control Order which were meant to be only procedural in nature. The counsel submitted that, when substantive provision was withdrawn from the Central Order, the procedural provisions in the State Order have to follow suit especially when the licence was to be one and the same and no separate licences were to be issued under the Central and State Orders. It was submitted that the State Order had no independent object to achieve and it was only in the aid of the Central Storage Order of 1977 to provide for the efficacy of clause 3 of the Central Order which required a licence to be obtained under the State Order and prescribed the stock limits. It was submitted that Central Order continued to operate for nearly 22 years which shows that it was regulating the field and the State Orders were meant only to assist the Central Government in implementation of its orders. The learned counsel argued that, in 1997, the Central Government reviewed the whole position, sought opinion of the State Governments before issuing the Amendment Order on 10-11-1997 deleting `edible oilseeds and edible oils' from the Central Order. The Central Order of 1977 came to an end on 10-11-1997 in respect of `edible oilseeds and edible oils' and consequently, the State Order of 1981 also came to an end so far these two commodities were concerned. Therefore, clauses 15 and 24 of the State Order cannot operate in respect of these two items and hence, concurrence question would not arise. It was submitted that no separate control order for these two commodities had been issued by the State Government.

6.1 The learned counsel relied upon the following decisions in support of his contentions :

[a] The decision of the Supreme Court in The District Collector, Chittor v. The Chitoor District Groundnut Traders' Association, reported in AIR 1989 SC 989 was cited for the proposition that a delegate is not entitled to exercise powers in respect of or in contravention of the delegated powers. The Supreme Court was concerned with the provisions of the Andhra Pradesh Scheduled Commodities Dealers (Licencing and Distribution) Order, 1982 and the question about the validity of imposition of restriction on export of groundnut seed and oil to outside the State and

directions for compulsory levy at specified price. In paragraph 6 of the judgement, the Supreme Court noted that the 1982 A.P. Order which was framed by the State Government in exercise of the delegated powers did not contain any provision placing any restriction on the transport or movement of the edible oil or oil seeds nor did it provide for imposition of compulsory levy, and that it did not fix any price. It was held that the directions issued by the government placing restrictions on the movements of oilseeds and oil and imposing compulsory levy and requiring millers and traders to sell oil seeds and oil at a price fixed by it were outside the purview of the 1982 Order. Those directions had no sanction of law. It was held that if the State Government was facing any problem, it could have made amendments in the 1982 Order regulating matters specified in clauses (d) and (f) of section 3(2) of the Act after obtaining the prior concurrence of the Central Government, but no such course was followed. This is why, it was held that the directions contained in the Government Order were illegal and void as they were in contravention of the powers delegated to the State Government under Notification dated 9-6-1998.

[b] Reliance was placed on the decision of the Division Bench of the Andhra Pradesh High Court which confirmed the decision of the learned single Judge of the Andhra Pradesh High Court, copies of which decisions are placed in the paper book. In the Writ Appeals Nos. 1546 to 1549 of 1998, the Division Bench while confirming the decision of the learned Single Judge observed that if the Central Order of 1977 was to deal only with storage limits of `edible oilseeds and edible oils', then it would not have contained clause 3. It was held that, a reading of clauses 3 and 4 of the Central Order of 1977 made it clear that they operated in different fields and that clause 3 dealt with requirement of obtaining a licence, while clause 4 placed restriction on dealer on its possession and the quantum of `edible oilseeds and edible oils' by specifying the maximum limits. It was held that the State Government was labouring under a misconception that it had power to fix prices, regulate distribution and also movement of `edible oilseeds and edible oils' and for exercise of

such power, it depended on clause 12 of the A.P. Order, 1982. However, as held by the Supreme Court in District Collector, Chittoor (supra), there was no concurrence from the Central Government for fixation of any price or placing restrictions on movement or distribution of `edible oilseeds and edible oils'. It was held that since the `edible oilseeds and edible oils' are now deleted from the purview of the Central Order of 1977, as a necessary corollary, the State Government is bound to obey the same and now cannot insist upon obtaining of licence by dealers or producers relating to edible oilseeds and edible oils. The learned Single Judge of the Andhra Pradesh High Court who had decided Writ Petitions Nos. 3816 of 1998 and 7753 of 1998, had held that the Andhra Pradesh Order of 1982 issued by the State Government was only the product of the delegated authority to enable the State Government to effectively implement the orders already issued by the Central Government in 1977. In paragraph 15 of that judgement, it was held that the earlier State Order of 1978 was a sequel to the order issued by the Central Government in 1977 as the licences and other terms and conditions were to be covered by the State Order. It was held that, as on 1982, there were two orders holding the field in respect of `edible oilseeds and edible oils', but the order made by the Central Government in 1977 was the Parent Order issued under section 3 of the said Act and only the licencing aspect was to be taken care of by the State Government. It was held that the Central Order will prevail over the State Order in case of any conflict between the two, and that the State cannot issue any order disregarding the direction of the Central Government. The learned Single Judge held that, in view of the Amendment Order dated 10th November 1997 deleting the words `edible oilseeds and edible oils' wherever occurring in the Central Storage Order, the State was required to delete them, in compliance of such amendment, from its order. It was held that the effect of the direction of the Central Government was that the existing State Order was required to be properly amended and that the State ought to have deleted the words `edible oilseeds and edible oils' completely from the A.P. Order of 1982. The learned Single Judge, therefore, ordered that the commodities `edible oilseeds and edible oils'

wherever occurring in the A.P. Scheduled Commodities Dealers (Licencing and Distribution) Order, 1982 stand deleted and ordered that not only the restriction on stock limits, but also the licensing of dealer and all other requirements stood dispensed with.

7. It has been contended that the State order of 1981 to the extent that it retains the essential commodities `edible oilseeds and edible oils' is repugnant to the Central Order of 1977 from which these items were removed. Analogy was drawn from the legislative repugnancy between the laws of Parliament and the State Legislature on the same subject contained in the Concurrent List and it was contended that in case of repugnancy, the Central Law will prevail, and that the State must obey the executive directions of the Central Government in view of the constitutional scheme. It was argued that the State Order of 1981 to the extent that it retains these items stood repealed by the central law as soon as these essential commodities were deleted from it and the control thereon stood lifted. Continuing these items in the State Order of 1981 was in conflict with the lifting of control in the Central Order. The contention was that the State is duty bound to obey the directions issued by the Union of India and delete `edible oilseeds and edible oils' from the State Order of 1981.

8. Let us therefore examine whether there is any repugnancy between the Central Order of 1977 and the State Order of 1981, which was issued under section 3(1) of the said Act, so as to bring about any implied repeal of the State Order of 1981 to the extent it relates to `edible oilseeds and edible oils' which were deleted from the Central Order of 1977, as contended on behalf of the original petitioners. The State Order of 1981 was issued by the State Government with prior concurrence of the Central Government under section 3 read with section 5 of the said Act. It provided for licencing, control and stock declaration and was issued, because, the State Government was of the opinion that it was necessary and expedient so to do for maintaining supplies of the essential commodities dealt with therein and for securing their equitable distribution and availability at fair prices. Essential articles to which the State Order of 1981 applies are enumerated in Schedule I thereof. Under clause 3(1)(a) of the State Order of 1981, no person shall carry on business as a dealer [as defined in clause 2(c)] in edible oilseeds including groundnut in shell; edible oils including hydrogenated vegetable oils, food grains, pulses, khandsari and sugar, if the stock of such

essential articles in his possession at any time exceeded the quantities specified against them. A licence is also required for carrying on business as a producer [as defined in clause 2(17)] in essential articles under clause 3(2). Prior to this State Order of 1981, there existed various State Orders which were repealed by clause 29 of the State Order of 1981 including the Gujarat Pulses, Edible Oilseeds and Edible Oils Dealers, Licence) Order, 1977 which contained similar licencing provision in clause 3.

8.1 The Central Order of 1977 was issued for maintaining supplies and for securing equitable distribution and availability at fair prices of pulses, edible oilseeds and edible oils. It extended to whole of India and by clause 3 required a person to obtain licence under the State Order for doing business as a dealer in these items if the stocks of pulses or edible oilseeds or edible oils in his possession exceeded the tabulated quantities. Thus, both the Central Government and the State Government had issued orders in respect of `edible oilseeds and edible oils'. Clause 3 of the Central Order required licencing of dealers as per the State Order, while clause 3 of the State Order required licencing of dealers and producers of the essential articles including `edible oilseeds and edible oils'. The Central Government issued the order under section 3(1) of the said Act and even the State Government had issued it under the same provision by virtue of delegation of powers to issue such orders made under section 5 of the Central Government. By virtue of such delegation, both the Central Government and the State Government had powers to make such orders under section 3(1) of the said Act. Even apart from the provisions of the Essential Commodities Act and the delegation provision of section 5 thereof, the State Legislature had power to make laws concurrently with the Parliament under Entry 33 of the Concurrent List in respect of foodstuffs, edible oilseeds and edible oils. The State Government, therefore, also had the executive powers coextensive with its legislative power in respect of those items. The simultaneous exercise of legislative powers in respect of the matters entrusted to both the Union and the States and their corresponding executive powers have to be viewed in harmony with each other. The concept of concurrent legislative powers to the Centre and the State is a unique example of cooperative federalism and is meant to accommodate and balance the perceptions of both the Union and the State in the field of legislation.

8.2 Under Entry 33(b) and (c) of the Concurrent list,

both the Parliament and the State Legislatures have legislative competence to make laws with respect to foodstuff including `edible oilseeds and edible oils' and price control. The said Act is enacted by the Parliament under entry 33. The executive power of a State is coextensive with its legislative power, but in any matter with respect to which the legislature of a State and Parliament both have powers to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. The executive power conferred by the Constitution on the Union is reflected in Chapter II of Part 11 which requires the executive power of every State to be so exercised as to ensure compliance with the laws made by Parliament and so as not to impede or prejudice the exercise of executive power of the Union. When there is any inconsistency between the laws made by Parliament and by the State Legislature, the law made by Parliament shall prevail and to the extent of repugnancy, the State law will be void. When law is made by the Legislature of a State with respect to a matter enumerated in the Concurrent List and if the State law has received Presidential assent, it will prevail in that State, notwithstanding its being inconsistent with the law made by the Parliament. The State can make law where there is no central legislation or with a view to supplement the central legislation. Both, the Centre and the State, must be presumed to be conscious of the need for accord and need for accommodating each other in the common interest, as was held by the Supreme court in Ram Chandra v. A Lal and others, reported in AIR 1987 SC 1837. One of the test for ascertaining whether the inconsistency is irreconcilable is to pose a question: Can the State law be obeyed or respected without flouting or violating the Central law in letter and spirit? If the answer is in the affirmative, the State law cannot be invalidated.

8.3 The question of repugnancy between the Order made by the central Government and the Order made by the State Government would arise in case both the Orders occupy the same field with respect to the same matter and there is a direct conflict between the two provisions. If both the provisions occupying the same field do not deal with the same matter, but distinct, though cognate or allied matter, there is no repeal by implication as held by the Supreme Court in K.S. Hegde v. State of Karnataka, reported in (1990) 2 SCC 562. In context of the concurrent legislative powers conferred by entry 33 of the Concurrent List, the Supreme Court in Ch. Tika Ramji

v. The State of Uttar Pradesh, reported in AIR 1956 SC 676 held that the provincial legislatures as well as central legislature would be competent to enact laws on the same subject and the exercise of concurrent jurisdiction by the central legislature would not deprive provincial legislature of similar powers. Both would be competent to enact such pieces of legislation and no question of legislative competence would arise. It was held that none of the provisions of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 or the Orders issued under the Essential Commodities Act overlapped, the Centre being silent with regard to some of the provisions which were enacted by the State, and, the State being silent with regard to some of the provisions which were enacted by the Centre. The Supreme Court held that there being no repugnancy at all, the U.P. Sugarcane (Regulation, Supply and Purchase) Order, 1954 could not be validly repealed by the Central Act, as was purported to be done by clause 7 of the Sugarcane Control Order, 1955.

9. The State could have made legislation on all the matters falling under entry 33 of the Concurrent List including foodstuffs, edible oilseeds and edible oils in exercise of its own concurrent powers within the bounds of the constitutional mandate and by obtaining Presidential assent even its laws in conflict with the parliamentary legislation would have operated in the State. Instead, the Parliament in exercise of its concurrent powers, while legislating on this subject provided for delegation of the powers by the Central Government to the State Government to issue orders under section 3(1) of the said Act. The power statutorily delegated under section 5 retains its quality and level and the orders issued by the State Government have the same efficacy as that of the orders issued by the Central Government. By the notified order dated 9th June 1978 made under section 5 of the said Act, it was directed that the power to issue orders or notifications under section 3 be also exercisable by the State Government or other officer or authority, as may be specified in the direction. The delegation of powers is made subject to conditions, if any, as may be specified in the Order. The conditions subject to which the powers under section 3(1) of the said Act to make orders in relation to foodstuffs to provide for the matters specified in clauses (a) to (g) were stated in the said Order GSR 800 dated 9th June 1998 as under :

"[1] That such powers shall be exercised by a State Government subject to such

directions, if any, as may be issued by the Central Government in this behalf;

[2] That before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and

[3] That in making an order relating to any of the matters specified in the said clause (j), the State Government shall authorise only an officer of the Government."

The exercise of powers to issue orders was made subject to directions that may be issued by the Central Government. It will be seen that prior concurrence of the Central Government was required only before making an order relating to any matters specified in clause (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under clause (d). There was no requirement of prior concurrence imposed in respect of orders on other matters.

10. By order dated 10th November 1997 issued under section 3 of the said Act, the Central Government amended its Storage Control Order of 1997 by deleting the words `edible oilseeds and edible oils' from its preamble, title and from all other clauses so as to confine the Order to pulses only. Therefore, on and from 10th November 1997, there remained no Central Order under section 3 in respect of `edible oilseeds and edible oils'. The State Order of 1981 which also contained stock limit provisions for licensing purposes similar to those tabulated in the pre-amended Central Order of 1977, however continued to operate. The Central Amendment Order of 1997 did not even purport to amend the State Order of 1981. The question is whether there was any implied repeal of the provisions relating to `edible oilseeds and edible oils' in the State Order of 1981 merely because the provisions of the Central Order of 1977 were amended by omitting `edible oilseeds and edible oils' therefrom or whether the omission of these items

from the Central Order brought about any repugnancy in the State Order of 1981. There can arise no question of repugnancy when the field is not governed by both the Central and State Orders in respect of the same subject matter. The power under section 3(1) conferred by a valid delegation under section 5 of the said Act did not depend upon any prior exercise of any power under section 3(1) by the Central Government. In other words, efficacy of the State Order of 1981 under section 3(1) or its legitimacy did not depend on existence of an Order in the same field by the Central Government. The State Government can make orders independently of the fact whether the Central Government has made an order in the same field. There will not be much sense in delegating power to make orders to the State Government if the said orders are meant to be only mirror reflections of the Central Orders. In fact, the purpose of delegation, in such cases, would be to let the State Government deal with the situation, of course, subject to the conditions on which the power is delegated to it. There was no conflict between the provisions of the Central Government Order of 1977 relating to `edible oilseeds and edible oils' and those covering the same field in the State Order of 1981, and there can never arise any question of conflict or repugnancy after those items were removed from the Central Order. When no question of conflict or repugnancy can arise, because, the Central Order of 1977 ceases to govern the field as regards the `edible oilseeds and edible oils' and only the provisions of the State Order of 1981 remain in the field, there can be no implied repeal of the provisions of the State Order of 1981 relating to `edible oilseeds and edible oils'. We hold that the omission of `edible oilseeds and edible oils' from the Central Order of 1977 had no effect on the efficacy of the State Order of 1981, which continued to operate having been framed by the State Government under section 3(1) read with section 5 of the said Act.

11. The question then remains whether there were executive directions issued by the Central Government to the State Government to amend the provisions of the State Order of 1981 in so far as they related to `edible oilseeds and edible oils'. The communication dated 13-11-1997 has been heavily relied upon on behalf of the respondents as containing such a direction. In para 20 of the judgement, the learned Single Judge observed that, by the Central Government letters dated 13-11-1997 and 23-12-1997 all the State Governments were required to make amendment in the existing State Government Orders to delete the words `edible oilseeds and edible oils' or to make law to give effect to the direction of the Central

Government. In paragraph 23 of the judgement, the learned Judge refers to `circular' dated 23-12-1997, a copy of which is on record. This communication is nothing but a letter addressed by a Joint Secretary of the Union Ministry to one Ex-M.P. (named Shri Shyam Bihari Mishra) in response to some query which was made in a letter written by him, which is not produced on record. This communication only narrates that the Central Order of 1977 was amended by the Amendment Order dated 10-11-1997 and the corregendum dated 11-12-1997 deleting `edible oilseeds and edible oils' from the clauses of the Central Order. It was mentioned therein that the State Government and the Union Territories were requested by the office letter dated 13-11-1997 to ensure compliance with the amendments "to the said Order of 1997". The letter dated 13-11-1997 was written by the Chief Director of the Ministry of Food and Consumers Affairs to Secretaries of all States and Union Territories forwarding the Amendment Order dated 10-11-1997 relating to deletion of certain clauses of the Central Order of 1977 in so far as they related to `edible oilseeds and edible oils' "for information and compliance." The learned Single Judge held that the meaning of the word `compliance' in this letter was not just re-notifying Central Amendment Order of 1997, but its meaning was to make necessary corrections, modifications or amendments in the State Order of 1981 relating to storage and control of edible oilseeds and edible oils. It has been held that it was wrongly assumed by the State Government that the delegated powers have not been taken back by the Central Government, and that the State Order of 1981 is still in operation in respect of `edible oilseeds and edible oils'. In other words, the learned Single Judge held that the State Order of 1981 stood repealed as regards these items and the delegation under section 5 stood withdrawn. Delegation under section 5 was of general nature and not confined to any particular foodstuff. The withdrawal of delegation could not have been effected except by modifying the notified order of 9-6-1998. If at all the Central Government wanted to withdraw the delegation, it would have made necessary modifications in that order or issued directions to the State Government to delete these items also from its Order of 1981. The Amendment Order dated 10-11-1997 deleting these items from the Central Order of 1977 was not intended to amend the State Order of 1981 and there is no provision in the Amendment Order of 10-11-1997, which would justify taking away or restricting the powers of the State Government, in respect of these commodities, which were delegated to it under section 5 of the said Act. In fact, in absence of

the Central Order of 1977 governing the field by reason of deletion of these items, the question of any possible conflict of the State Order with the Central Order vanished and the field was now left to the State Government as a delegate and its Order would continue to operate in the field in absence of any direction to delete these items from the State Order. There is no provision in the Amendment Order of the Central Government which by necessary implication can be said to be repealing any provision of the State Order of 1981. The meaning given to the word `compliance' occuring in the letter dated 13-11-1997 under which a copy of the Amendment Order of 10-11-1997 was forwarded "for information and compliance", by the learned Single Judge, is not at all warranted, since there was no express or implied repeal of the provisions of the State Order of 1981, nor was the delegation of power made under the notified Order dated 9th June 1998 under section 5 of the said Act withdrawn or curtailed by any subsequent order. The delegation continued to be valid for all foodstuffs including `edible oilseeds and edible oils'. The power delegated to the State Government under section 3(1) read with section 5 of the Act never depended on the exercise of power under section 3(1) by the Central Government and it could be exercised irrespective of the fact whether the Central Government made any Order or not on the same subject. The Order of the State Government did not derive its life from the Central Order of 1977, but from its powers under section 3(1) read with section 5 of the said Act and therefore, none of its provision will die by deletion or omission of the provisions of the Central Order of 1977.

11.1 The word `compliance' in the circular letter dated 13-11-1997 would in the context mean that the State should take into account the deletion made in various clauses of the Central Order of 1977 so that it may not insist upon the compliance of the Central Order as it stood prior to its amendment which imposed a duty on the dealers to give intimation regarding stocks of the `edible oilseeds and edible oils' to the Collector (clause 4(2) of the Central Order) to furnish a fortnightly return to an authority specified by the State Government (under clause 5 of the Second Order) in respect of the stocks held by him. By no stretch of imagination, can the word `compliance' in the letter dated 13-11-1997 be construed to be a direction to amend the State Order, because, the State Order of 1981 derived its life not from the Central Order of 1977, but stood on its own by virtue of the powers of the State Government under section 3(1) read with section 5 of the said Act

and it continued to operate in absence of any direction to delete these items from the State Order or by withdrawal of delegation. In short, there was no curtailment of the State Government's powers either by any amendment of the notified order issued under section 5 or by issuing any directions as envisaged thereunder.

12. There is no warrant for holding that the views that are reflected in the communication sent by the Union Minister and the Secretary of the concerned Department to the State, were an expression of any personal opinion of the Minister and the Secretary as has been held by the learned Single Judge. The letter dated 19th June 1998 was written by the State Minister to the Union Minister for Food and Consumer Affairs and a copy thereof was forwarded for urgent necessary action to the Secretary, Government of India by him in the concerned Department. In that letter, it was pointed out that there was a price escalation of groundnut oil which rose from Rs.39=00 per kg in June 1997 to Rs.50=00 per kg in June 1998. The Union Minister's attention was drawn to the fact that there was speculative rise in prices and poor farmers had not been benefitted at all. It was mentioned that the interested lobby in edible oils had started taking advantage of hoarding the stock and had captured the market of edible oil in Gujarat with the sole motive of fetching exorbitant profits. The State Minister wrote that it was therefore absolutely imperative that the State Government must have the powers to enforce strict control over the unscrupulous oil traders and millers, but unfortunately, ever since the withdrawal of the Central Stock Control Order, 1977 in respect of edible oils and edible seeds, they had absolutely a free hand, resulting in an unprecedented price rise which had put the State Government in a very precarious situation. It was stated that if this trend was not checked immediately, there were all chances of breakdown of law and order, and that, from all quarters, the State Government was under a heavy pressure and that there appeared a clear warning signal that if the prices were not arrested forthwith, a serious situation would arise in the State. The State Minister requested the Union Minister to re-introduce stock control at the earliest so that the State Government can control the situation. He earnestly requested the Union Minister to issue necessary concurrence in this regard at the earliest. It is clear from this communication that it was not intended to be a letter expressing private views, but it was written by the Minister in charge of the concerned Department of the State to the Union Minister of the Central Government who had an authority to issue such concurrence.

12.1 On 27th July 1998, the Union Minister for Food and Consumer Affairs, Government of India responded to the letter of the State Minister drawing his attention to the notified order dated 9th June 1978, by which the Central Government had delegated the powers conferred by section 3(1) of the Act, to make necessary orders to provide for matters specified in clauses (a) to (j) of section 3(2), to the State Government under section 5 of the said Act subject to certain conditions. It was stated that if the State Government finds it appropriate, it can regulate the storage, distribution etc. of `edible oilseeds and edible oils'. It was also stated that the State Governments would be the appropriate authority to take decision regarding the permissible stock limits and the turn over period within their area of jurisdiction. The Union Minister also wrote that, considering the widespread public perception that prices of essential commodities have risen sharply in the recent past, the State Government may like to take an emergent decision for use of the said order dated 9th June 1978 in respect of `edible oilseeds and edible oils'. There can never be a clearer concurrence to the State Government's request for applying the State Order of 1981 which was issued with prior concurrence after the powers were delegated under the notified order dated 9th June 1978 under section 5 of the said Act to edible oilseeds and edible oils. This letter also cannot be said to be expression of any private views of the Union Minister. He had taken into consideration the situation that had arisen in the State and the request of the State Government for concurrence and indicated that the delegation of the powers under the notified order dated 9th June 1978 stood good notwithstanding the amendment in the Central Order of 1977 and that the State Government can go ahead with the stock control measures in respect of these essential articles. The communication by this letter was not a private message, but was meant to be an official response of the Central Government to the request of the State Government asking it to restore the stock control over these essential commodities in view of the consequences that had arisen because of the amendment in the Central Order of 1977, in this region. The Secretary to the Government of India to whom the State Minister had forwarded a copy of his letter dated 19th June 1998 had also officially responded by writing a letter to the Chief Secretary of the State on 24th July 1998, the contents of which are similar to those of the communication of the Union Minister to the State Minister sent on 27th July 1998. There is a reference to the fact that some State Governments have represented that the

Storage Control Order pertaining to `edible oilseeds and edible oils' should be reimposed by the Central Government. In fact, this State was already having the State Order of 1981 governing the field and that order was issued with prior approval of the government in exercise of the powers delegated to the State Government and there was therefore no need to make a fresh order after obtaining a fresh approval. As held by us hereinabove, the State Order of 1981 continued to govern the field notwithstanding the amendment in the Central Order of 1977 and what could have earlier been done under the State Order can be continued to be done under it with more freedom, especially in view of the fact that these items were deleted from the Central Order of 1977 and there remained no possibility of any conflict between the exercise of powers by the State Government and the Central Government in respect of these essential articles which the Central Order ceased to govern after its amendment.

12.2 By the communication dated 1st August 1998 in response to the letter of the Secretary, Government of India, Ministry of Food and Consumer Affairs, the State Government indicated that it will impose stock limits on `edible oilseeds and edible oils'. The concurrence of the Central Government on issuance of such specific direction under section 24(1), though not strictly required, was writ large in the communications of the concerned Union Minister and the Secretary of the concerned Department of the Central Government. The Central Government in its affidavit filed in this proceeding has stood by the State Government in respect of issuance of the directions under clause 24(1) specifying the stock limits. The State Order of 1981 already contained a stock limit in the tabulated form in clause 3 thereof in context of obtaining a licence. The State Government had after entering into correspondence with the Central Government and obtaining the clearance for issuing stock control directions, issued order dated 14th August 1998. Clause 24(1) of the Government Order of 1981 empowered the State Government to issue directions to dealers or producers, inter alia, regarding maintenance of stock, storage, display of prices etc. and every dealer or producer to whom such direction was issued, was required to comply with the same. Clause 24 already had prior concurrence of the Central Government which is noted in the preamble of the Gujarat Order of 1981. Therefore, the issuance of the directions which are in fact at the behest of the Central Government, regarding maintenance of stocks under clause 24(1) at a time when there were no directions governing the field

issued by the Central Government, was a matter permissible under the Gujarat Order of 1981 and issuance of such directions did not in any way conflict with any provisions of the Central Order of 1977, which ceased to contain any direction regarding maintenance of stock of edible oilseeds and edible oils after the amendment made on 10-11-1997.

12.3 In the above view of the matter, there was no valid basis or reason for issuing a declaration that the words `edible oilseeds and edible oils' should stand deleted from the Gujarat Order of 1981 or for setting aside the directions issued by the State Government regarding maintenance of stock under clause 24(1) of the State Order of 1981. We therefore find no justification for granting any relief to the petitioners as has been done in the impugned order. For the reasons that we have given hereinabove, we are, with respect, unable to agree with the opinion of the learned Single Judge and the views expressed by the Andhra Pradesh High Court on the subject. Since the Special Leave Petition was summarily dismissed by the Supreme Court, we have found no impediment in our considering the matter, and, in all fairness to the learned counsel for the contesting respondent, we may say that he did not contend that, because the Special Leave Petition was summarily dismissed against the decision of the Andhra Pradesh High Court, we should treat that as a decision binding on us.

13. In the above view of the matter, both these appeals are allowed and the impugned judgement and order of the learned Single Judge is hereby set aside. Both the petitions stand rejected. There shall be no orders as to costs all through out.

APRIL 19, 2001 [R.K.ABICHANDANI, J.]

[M.C.PATEL, J.]

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